

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
HUNTINGTON DIVISION**

GENBIOPRO, INC.,

PLAINTIFF,

v.

Case No. 3:23-cv-00058

MARK A. SORSAIA, et al.,

DEFENDANTS.

**MOTION OF ARKANSAS, ALABAMA, FLORIDA, GEORGIA, IDAHO, INDIANA, IOWA, KANSAS,
KENTUCKY, LOUISIANA, MISSISSIPPI, MISSOURI, MONTANA, NEBRASKA, NORTH DAKOTA,
OHIO, OKLAHOMA, SOUTH CAROLINA, SOUTH DAKOTA, TENNESSEE, AND TEXAS AS AMICI
CURIAE IN SUPPORT OF DEFENDANTS**

Proposed Amici are the States of Arkansas, Alabama, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, and Texas. Proposed Amici respectfully move for leave to file an amicus brief in support of the Defendants in this matter.

INTEREST OF PROPOSED AMICI CURIAE

Eight months ago, the Supreme Court overruled *Roe v. Wade* and returned the authority to regulate or prohibit abortion to “the citizens of each State.” *Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct. 2228, 2284 (2022). In response, many States enacted laws prohibiting, restricting, or otherwise regulating abortion. West Virginia was one of them. GenBioPro disagrees with *Dobbs* and the citizens of West Virginia, and it has brought this case to override both. The Proposed Amici States all prohibit, restrict, or otherwise regulate abortion. Each of the Proposed Amici has a sovereign interest in protecting their citizens—born and unborn—and write to explain why those laws are not preempted under an outlandish interpretation of the Food, Drug and Cosmetic Act.

ARGUMENT

District courts have broad discretion to allow participation of amici curiae. While this Court does not have specific rules for the filing of amicus briefs, it has “discretion” to allow them. *Ohio Valley Envtl. Coal., Inc. v. McCarthy*, 313 F.R.D. 10, 32 (S.D. W.Va. 2015). “Courts typically grant amicus status where the parties ‘contribute to the court’s understanding of the matter in question’ by proffering timely and useful information.” *Ga. Aquarium, Inc. v. Pritzker*, 135 F. Supp. 3d 1280, 1288 (N.D. Ga. 2015).

Here, Proposed Amici offer timely and useful information. This brief is submitted with sufficient time for Plaintiffs to respond. Cf. Fed. R. App. P. 29 advisory committee note (1998) (explaining that an amicus brief filed shortly after the brief it supports gives the opposing party sufficient time to respond). Indeed, opposing counsel had notice of the brief: Proposed Amici informed them of our plans to file a brief on February 23. Proposed Amici’s brief will also be useful to the Court. *United States ex rel. Gudur v. Deloitte Consulting LLP*, 512 F. Supp. 2d, 920, 927 (S.D. Tex. 2007). *Dobbs* explained that States retain authority to regulate or prohibit abortion; the brief confirms that the FDA has not supplanted the States’ role by determining that mifepristone is effective at killing unborn children.

With these arguments, the Proposed Amici will fulfill the classic role of amici curiae: “assisting the court in cases of general public interest by making suggestions to the court, by providing supplementary assistance to existing counsel, and by insuring a complete and plenary presentation of difficult issues so that the court may reach a proper decision.” *Newark Branch, NAACP v. Harrison*, 940 F.2d 792, 808 (3d Cir. 1991) (citation omitted).

CONCLUSION

For all these reasons, the Court should grant this motion and allow Proposed Amici to file the attached brief.

Dated: February 28, 2023

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CERTIFICATE OF SERVICE

I certify that on February 28, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Jeffrey A. Kimble
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